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EXAMINER

REICHLE, KARIN M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 12/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/825,609

Applicant(s)

SHERROD ET AL. 

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-14 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-14 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 April 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 15 October 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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1. It is noted that claim 19, line 4 is not compliant with 37 CFR 1.121, i.e. "with an" should be --with the--. Any further response should be in compliance with 37 CFR 1.121.

2. In the 8-20-01 IDS a "Flush Safe" package label was cited. Such reference is no longer of record in the file. Applicant is requested to submit a copy of such reference for purposes of completeness in the file. Applicant is thanked in advance for providing such copy.

3. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 10-15-02 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

4. The drawings are objected to because in Figures 2 and 3, to be consistent with the description on page 4, lines 4-8 and Figure 4, the outline or portions thereof of elements 42, 50 and 60 which are shown by solid lines should be shown by dashed lines instead to denote underlying structure. It is noted some portions are already so denoted. This also applies to elements 142 and 152 in Figure 5. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

5. The disclosure is objected to because of the following informalities: 1) The Summary of the Invention section, i.e. a description of the invention of the claims, and the invention of the claims is no longer commensurate, see MPEP 608.01(d) and 1302.01. For example, where is a continuous fluid impermeable delay layer set forth in this section? 2) On page 6, line 3 of the

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specification "W" should be deleted or amended to read --W1, ~~W2, W3, W4~~, W1', W2'-- to avoid confusion. 3) On page 14, line 21 ",53," should be --and the wrapping material of layer 50-- because no covering material 53 was shown and denoted. 4) In the claims, Applicants require that the surface areas of each of said primary surfaces of the delay layer is less than the surface area of each of said primary surfaces of the largest of said at least one absorbent layer. Also see page 12, line 7- page 13, line 13 of the specification. While it is clear from the specific embodiment described that layer 50 is the "larger" of the two absorbent layers 42, the claims are not limited to such a specific embodiment. What is considered "the largest" if there are two identically sized layers? Just one layer? How is "largest" determined or defined? By area? By length? By width? What is a largest layer when one layer is larger in one dimension and another is larger in another dimension but none are larger in all dimensions? Appropriate correction is required.

6. Claim 20 is objected to because of the following informalities: the preamble of this claim is inconsistent with that from which it depends, i.e. on line 1 "insert" should it be --garment-- or "insert...comprising" should be --garment of claim 19, where the absorbent insert further comprises--. Appropriate correction is required.

7. It is further noted that the terminology "body-facing" and "garment-facing" in claims 1-3, 5-14 and 17-18 is interpreted as not claiming the body or garment as part of the invention, i.e. these claims are directed to the subcombination of the insert. It is further noted that the terminology "body-facing", "outward-facing" and "garment-facing" in claims 19-20 are

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interpreted as not claiming the body or the exterior but claiming the garment in these garment/insert combination or "system" claims.

8. Support for the claim language "continuous fluid impermeable" is found in the originally filed claims, the Figures, e.g. Figure 4, and page 10, line 14-page 13, line 13.

9. Claims 1-3, 5-14 and 17-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, 12 and 19, a positive structural antecedent basis for "the largest of the said at least one absorbent layer" (last line) should be defined, i.e. how many layers is Applicant claiming at a minimum? Is Applicant claiming a minimum of three layers of which one is the "largest"? It is noted that when there are two layers, one is smaller and one is "larger" and when there is just one layer or a number of layers of the same size, there is no larger or largest layer.

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claims 1-3, 5-14 and 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Nilsson et al.

See Figures, especially Figures 1-4 and 13-17, col.1, lines 2-7 and 51 et seq, col. 2, lines 34 et seq, col. 3, lines 26-29, 48-54 and 65 et seq, col. 6, lines 31-53, 60, col. 7, lines 17-28. Therefore, with regard to claims 1, 6, and 12, the insert is at least the two members 1 and 5 but could be more members, see col. 3, lines 26-29, the members decrease in at least width, and preferably also

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length, from the member 1 to the member closest to the body. The garment facing outer surface or layer is the lower portion of 23 of member 1 as seen in Figure 4. The body-facing outer surface or layer is the upper portion of the tissue surrounding the inner core of the uppermost member of the insert, e.g. in the two member insert of Figure 4 the surface denoted by the numeral 19. The at least one absorbent layer is at least one of the inner cores or a portion thereof, see, e.g., col. 2, lines 50-52, and 64-66 and col. 3, lines 50-53.

The claims 1 and 12 further call for at least one ^{water-insoluble} continuous fluid impermeable delay layer adapted to substantially affect the flow of fluid passing through the insert. Note also dependent claims 2-3, ~~5~~, 13-14 and 18. Attention is invited to the definition of "substantially affect the flow" on page 10, lines 16-20 of the instant specification and some examples of such on page 10, lines 20-24, and thus the definition of "substantial change to flow direction" on page 10, lines 24-28 and the examples of such on page 10, line 28-page 11, line 1. With regard to the claim language "fluid impermeable", attention is invited to page 11, lines 15-19 of the instant specification } and thereby the definition of "partially inhibiting fluid", page 11, lines 3-6, and the examples on page 11, lines 19-27 { With respect to the definition of "continuous", the American Heritage Dictionary defines such as "Extending or prolonged without interruption or cessation, unceasing." and see Applicants' arguments in the paragraph bridging pages 7-8 of the 10-15-02 response. In light of the specification, the dictionary definitions, the dependent claims and Applicants' arguments, the terminology "continuous fluid impermeable" is interpreted to include delay layers which are unapertured water ^{insoluble} layers which {allow flow only after a specific length of time, i.e. partially

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inhibits the flow of fluid, and prior to that time] changes the flow direction such as redirecting into other regions. Thus the barrier layer in Nilsson et al is, at the very least, the barrier layer in member 5 or a smaller member, see, e.g., col. 2, lines 68 et seq and col. 3, lines 26-29 and col. 1, lines 66-73 and Figures. Thus the surface area of the primary surfaces, see definition on page 10, lines 3-6 of the specification, of the delay layer in, e.g., member 5 would be no greater than dimensions thereof which dimensions are less than the surface area of the primary surfaces of the largest of the absorbent layers, e.g. the inner core 25 or a layer thereof, of the member 1, see, e.g., Figures. [With regard to the functional language of lines 7-8 of claim 1 and line 10 of claim 12, see again the discussion supra of the definitions and col. 2, lines 73-75 of Nilsson et al. With regard to the preambles of claims 1 and 12, since the structure of Nilsson is the same as that claimed, any claimed functions, properties, or capabilities of such claimed structure are also deemed inherent in the same structure of Nilsson et al. See MPEP 2112.01]

In regard to claims 2-3, 5, 13-14 and 17, see discussion of claims 1, 6 and 12 with respect to the continuous fluid impermeable layer supra. With regard to claims 10 and 11, the delay layer is the barrier layer in a middle member of at least a three member insert, i.e. the first absorbent is the absorbent of the top member, the second absorbent is the absorbent or portion thereof above the barrier layer in the middle member. With regard to claim 7, it is noted that the claim does not require that the barrier layer be positioned between the largest of the said at least one absorbent layer or all the layers of the at least one absorbent layers, and the garment-facing outer surface. Thus the fluid barrier can be the barrier of a middle member of at least a three member insert and

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the at least one layer includes all the inner cores of the three members with the inner core of the uppermost member thereof on one side of the barrier and the garment facing layer on the other side. With regard to claim 18, the inner core of upper member 5 can be considered the intake layer and the core of the member 1 can be the at least one absorbent layer. In regard to claims 8 and 9, see portions of Nilsson cited supra. Also with regard to the “adapted for” language in claims 8 and 9, the structure of the claimed attached portion and the attachment portion of Nilsson et al is the same and thus the claimed properties, functions and capabilities of such claimed structure is also deemed inherent in the same structure of Nilsson et al, i.e. capability of attaching to anything including an absorbent garment. See MPEP 2112.01.

Claims 1-3, 6-7, 12-14 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Matsuda.

See Figures, col. 1, line 26-col. 2, line 26, i.e. body-facing outer surface or layer, top portion of 11, garment-facing outer surface, bottom portion of 11, absorbent layer, at least one of 8-8b, continuous fluid impermeable delay layer, see definitions in previous rejection and at least one of 9-9b. With regard to the preambles, see discussion of such in previous rejection which discussion also applies here with respect to Matsuda. As best understood of the terminology “largest”, see discussion supra, the Matsuda reference also anticipates the claimed relationship of the surface areas.

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nilsson et al in view of Kimberly-Clark Corp. '451, hereinafter referred to as KC.

Applicants claim a system including the combination of an absorbent garment and an absorbent insert. See discussion the Nilsson reference supra. The Nilsson reference teaches the insert attached to or in combination with an undergarment or clothing in the form of drawers but does not state whether the undergarment or clothing is absorbent. See previously cited portions of Nilsson and col. 6, lines 31-35 and 41-42 thereof. Note the definition on page 4, lines 16-25 of the instant specification. Also see KC at page 1, lines 10-17. To make the undergarment of Nilsson of cotton, i.e. absorbent of vaginal discharges and perspiration, i.e. body exudates, if not already, as taught by KC would be obvious to one of ordinary skill in the art in view of the

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recognition that such textile composition is well known for regular undergarments and the desire of Nilsson to be used with regular textile undergarments.

14. Applicants remarks on page 6, line 1-page 7, line 2 have been noted but are deemed moot because the specific issues discussed have not been reraised. Applicants remarks with regard to Nilsson et al have been considered but are deemed nonpersuasive because the barrier layer of the smaller member or members of the insert do have a surface area smaller than that of the absorbent layer, e.g. the inner core or a portion of the core of layer 1, see rejection supra, and thus do anticipate the claims.

15. Any inquiry concerning this communication should be directed to K. M. Reichle at telephone number 703-308-2617. The Examiner's regular work schedule is Monday-Thursday.

KMR

December 18, 2002

K. M. Reichle
KARIN REICHEL
PATENT EXAMINER